

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF ADMINISTRATIVE LAW JUDGES

In The Matter of: E & R Investment Co., Respondent	
--	--

HUDALJ 98-003-CMP
Decided: February 10, 1998

James P. McAleer, Esq.
For the Government

Before: ALAN W. HEIFETZ
Chief Administrative Law Judge

DEFAULT DECISION AND ORDER

On November 17, 1997, the Assistant Secretary for Housing-Federal Housing Commissioner ("Assistant Secretary"), U.S. Department of Housing and Urban Development ("HUD") filed a Complaint seeking a civil money penalty of \$12,500 against E. & R. Investment Company ("Respondent"), pursuant to section 537(c) of the National Housing Act, 12 U.S.C. § 1735f-15(c), and the applicable regulations under 24 C.F.R. Part 30. The Complaint charges that Respondent knowingly and materially violated its Regulatory Agreement with HUD by failing timely to file its required annual financial statement for fiscal year 1995. The Complaint notified Respondent of its right to appeal the imposition of the civil money penalty by filing an answer, and that failure to file an Answer within 15 days of receipt of the Complaint could result in imposition of the penalty sought. *See* 24 C.F.R. §§ 30.85(b)(6); 30.90(b); 26.39. Respondent received a copy of the Complaint on December 13, 1997, but failed to file an answer.

On January 16, 1998, the Department filed a Motion for Default Judgment. Respondent failed to respond to the Motion. HUD regulations provide that the administrative law judge shall issue a decision on the Motion for Default within 15 days after the expiration of the time for Respondent's filing of a response (*i.e.*, by February 17, 1998). *See* 24 C.F.R. §§ 26.34(c); 26.35(b); 26.39(a) - (b); 30.90(b). Accordingly, this matter is ripe for decision.

Findings of Fact¹

1. Respondent is the owner of Mt. Scott Terrace Apartments (“the project”), a multifamily housing project located in Portland, Oregon.² The project was built and financed with the proceeds of a loan which was insured against default by HUD under section 221(d)(3) BMIR of the National Housing Act, 12 U.S.C. §17151. Complaint, ¶ 2.

2. In exchange for receiving the benefits of a loan insured by HUD, Respondent executed a Regulatory Agreement with HUD in which it agreed to certain controls over its management and operation of the project. Paragraph 9(e) of the Regulatory Agreement requires Respondent to provide HUD with an annual financial report within 60 days after the end of each fiscal year. Complaint, ¶ 7, attachment A at 3.

3. Contrary to its obligation under the Regulatory Agreement, Respondent did not provide HUD with the required annual financial statement for 1995. Complaint, ¶ 7.

4. On May 5, 1997, the Department sent Respondent a written prepenalty notice that it intended to seek a civil money penalty against it because of its failure to file the required financial statement. Respondent did not reply to the notice. Complaint, ¶¶8 and 9, attachment B.

5. On November 17, 1997, the Assistant Secretary reviewed the allegations against Respondent and considered the factors set forth in 24 C.F.R. § 30.80, such as the gravity of Respondent’s offense, any history of prior offenses, Respondent’s ability to pay

¹HUD regulations provide that a default shall constitute an admission of all facts alleged in the Department’s Complaint, as well as Respondent’s waiver of any right to a hearing on these allegations. 24 C.F.R. § 26.39(c).

²The project’s owners are identified alternatively as Eldon D. Lahti and Richard S. Lahti, d.b.a. E. & R. Investment Co., a partnership. *See* Complaint, ¶ 7, attachment A at 5.

a penalty, injury to the public, benefits received by Respondent, and deterrence of future violations. After consideration of those factors, the Assistant Secretary determined that a civil penalty of \$12,500 should be imposed on Respondent. Complaint, ¶ 10.

Conclusion and Order

Respondent knowingly and materially violated 12 U.S.C. § 1735f-15(c) and its Regulatory Agreement with HUD by failing to furnish HUD with an annual financial report for fiscal year 1995. The maximum penalty that can be imposed is \$27,500. 24 C.F.R. § 30.45(b). The Assistant Secretary, after consideration of appropriate factors, issued the Complaint seeking an order imposing a civil money penalty of \$12,500. *See* 24 C.F.R. §§ 30.80; 30.85. Respondent failed to answer the Complaint, and therefore, is in default. *See* 24 C.F.R. § 26.37; 26.38; 30.90(b). Accordingly, it is

ORDERED, that Respondent shall pay to the United States of America a civil penalty of \$12,500. This penalty is immediately due and payable by Respondent without further proceedings, and this Order shall constitute the final agency action, pursuant to 24 C.F.R. § 26.39.

ALAN W. HEIFETZ
Chief Administrative Law Judge

Dated: February 10, 1998

CERTIFICATE OF SERVICE

I hereby certify that copies of this DEFAULT DECISION AND ORDER, issued by ALAN W. HEIFETZ, Chief Administrative Law Judge, HUDALJ 98-003-CMP, were sent to the following parties on this 10th day of February, 1998, in the manner indicated:

Chief Docket Clerk

REGULAR MAIL:

Eldon Lathi
8551 SE 141 Street
Portland, OR 97236

INTEROFFICE MESSENGER:

James P. McAleer, Esq.
U.S. Department of Housing
and Urban Development
451 7th Street, S.W., Room 10184
Washington, D.C. 20410

John W. Herold, Associate General Counsel
for Program Enforcement
U.S. Department of Housing
and Urban Development
451 7th Street, S.W., Room 10182
Washington, D.C. 20410